

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

"JESSICA ELAINE WOLFE" :
on behalf of herself :
and all similarly :
situated INMATES OF THE :
PENNSYLVANIA DEPARTMENT :
OF CORRECTIONS, :

vs. : CIVIL CLASS ACTION
: NO. 02-2687

THE PENNSYLVANIA :
DEPARTMENT OF :
CORRECTIONS, et al., :

Philadelphia, Pennsylvania
Monday, December 18, 2006

Deposition of MARK EMERY held at
Drinker Biddle & Reath LLP, One Logan Square,
18th and Cherry Streets, on the above date,
beginning at approximately 10:10 a.m., before
Kimberly A. Otherwise, a Certified Realtime
Reporter and Notary Public.

V A R A L L O Incorporated
Litigation Support Services
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1
2 (E-mail, 10/25/06, to Smith
3 from Emery marked Emery Exhibit 1.)
4 ---
5 ...MARK EMERY, after having
6 been duly sworn, was examined and
7 testified as follows:
8 BY MS. ROPER:
9 Q Good morning, Mr. Emery.
10 A Good morning.
11 Q As I said before, my name is Mary
12 Catherine Roper and I represent the plaintiff
13 in this case. Let me ask first, have you
14 given a deposition before?
15 A No.
16 Q Okay. There's a pretty simple
17 procedure. I'll explain it to you and make
18 sure you understand. If at any point you have
19 any questions, you can stop and ask me. The
20 deposition is pretty straightforward. I ask
21 questions. You answer them. You are, of
22 course, under oath and everything that we say
23 is being taken down. Because everything we
24 say is being taken down, it's absolutely
25 important that we follow two rules. One is

1
2 APPEARANCES:
3 MARY CATHERINE ROPER, ESQ.
American Civil Liberties Union of
4 Pennsylvania
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5 Philadelphia, PA 19106
6 Counsel for Plaintiff
7
8 BETH A. SMITH, ESQ.
Office of Attorney General
Litigation Section
9 21 S. 12th Street, 3rd Floor
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10
11 Counsel for Defendants
12
13
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21
22
23
24 (INDEX at end of transcript.)
25

1 Mark Emery
2 that every answer you give must be oral and
3 verbal in that you can't say uh-huh or unh-unh
4 because the court reporter can't distinguish
5 between those things. Is that clear?
6 A Yes.
7 Q And you passed the first practice
8 test of that. The second rule is that she
9 cannot take down two people talking at the
10 same time. So however painfully obvious it is
11 what it is I'm asking you, you need to wait
12 until I finish asking the question before you
13 give your answer. Okay?
14 A Okay.
15 Q And I will try to make sure I wait
16 until you finish your answer. And if I ever
17 haven't waited, I've come in on a pause or
18 just rudely interrupted you, feel free to tell
19 me that you are not finished and finish your
20 answer.
21 A Okay.
22 Q You should only answer questions
23 that you understand. So if you do answer a
24 question, I will assume you understood it.
25 You have every right to ask me to clarify a

1 Mark Emery
 2 question, break it down, explain what I mean.
 3 There is nothing about this that should be a
 4 trap. Okay?
 5 A Okay.
 6 Q If ever you want to confer with your
 7 counsel, you are free to do that, but I would
 8 ask that you do it not when you're about to
 9 answer a question. So if I've asked a
 10 question, please give the best answer you can,
 11 then tell me you want to take a break rather
 12 than going out while the question is pending.
 13 MS. SMITH: I'll object to that
 14 only to the extent there's something
 15 involving privilege which he does need to
 16 consult with me before answering the
 17 question.
 18 BY MS. ROPER:
 19 Q Absolutely. The exception would be
 20 to find out from your counsel if there's some
 21 issue of confidentiality, attorney-client
 22 privilege that you should protect in your
 23 answer. And I do not intend any of my
 24 questions to ask you to reveal communications
 25 you've had with your counsel and I'll try my

5

1 Mark Emery
 2 position?
 3 A I perform routine database
 4 operations such as the inmate misconduct
 5 system, reporting system, the informal
 6 resolution system, RISP, which is random
 7 inmate selection process, which is just a term
 8 used for our drug testing program, as well as
 9 ad hoc data queries such as this, so database
 10 really.
 11 Q Okay. Are there other state and
 12 county data analysts who work for the
 13 Department of Corrections?
 14 A There are other data analysts, but
 15 we're compartmented in the different things
 16 that we do and my niche is -- well, my niche
 17 is county data, but I do predominantly
 18 actually more state data. In other words,
 19 there's the county jail system which they have
 20 to report information to the DOC, and I
 21 coordinate that. And then there's the state
 22 data, which is the Department of Corrections
 23 data, and that's a major part of my job.
 24 Q And that would be several different
 25 kinds of data, so, for instance, data about

7

1 Mark Emery
 2 best to phrase them to avoid that, but we may
 3 run into a little bit of that.
 4 A Okay.
 5 Q You are not chained to the chair.
 6 If you want to take a break, get another soda,
 7 just walk, you are free to do that. This is
 8 not an endurance contest. So feel free to
 9 tell me any time that you need a break.
 10 A Okay.
 11 Q And, finally, are you taking any
 12 medication today or do you have any condition,
 13 medical condition or such that would interfere
 14 with your ability to recall and testify
 15 accurately?
 16 A No.
 17 Q Okay. Good. Thank you. Let's
 18 start at the beginning. Mr. Emery, where are
 19 you employed?
 20 A I'm employed with the Pennsylvania
 21 Department of Corrections.
 22 Q And what is your position?
 23 A I am the state and county data
 24 analyst.
 25 Q And what are your job duties in that

6

1 Mark Emery
 2 you said misconduct records, data about drug
 3 testing, all different streams of data come to
 4 you and you manage or report regarding them;
 5 is that correct?
 6 A Yes, yes. There are monthly reports
 7 that we put out to the different institutions
 8 about their misconduct rates, the drug
 9 testing, as well as I did, as I said, some of
 10 the ad hoc queries from determining how many
 11 lifers we have to determine the average length
 12 of stay for certain subset of our inmates to,
 13 for example, this one here.
 14 Q And where do those ad hoc inquiries
 15 come from?
 16 A They come from all over. Primarily,
 17 we work directly for the Secretary of
 18 Corrections. And, of course, his queries take
 19 precedence, but they come from outside
 20 government agencies such as Council of State
 21 Governments and they come from law firms.
 22 Really, they come from all over.
 23 Q And who is your supervisor?
 24 A My supervisor is Bob Flaherty,
 25 F-L-A-H-E-R-T-Y.

8

2 (Pages 5 to 8)

1 Mark Emery
2 **Q And what is his position?**
3 A I'll just -- I don't know his
4 official title so I'll just say acting data
5 chief.
6 **Q And do you know --**
7 A He's the chief data analyst.
8 **Q Okay. And do you know to whom he**
9 **reports?**
10 A Yes. He reports to James Schaefer,
11 S-C-H-A-E-F-E-R.
12 **Q And do you know Mr. Schaefer's**
13 **position?**
14 A He is the acting director for
15 planning, research, statistics, and grants.
16 **Q And do you know to whom Mr. Schaefer**
17 **reports?**
18 A Yes, Kathleen Gnall, G-N-A-L-L. And
19 she is the chief -- I don't know her title.
20 She oversees PRSG, our office, and inmate
21 services. She reports to Secretary Beard.
22 **Q Apart from ad hoc inquiries, do you**
23 **in any routine fashion deal with statistics**
24 **regarding parole?**
25 A Yes, yes.

9

1 Mark Emery
2 **Q And how do you do that?**
3 A We have -- well, we do not have
4 access to the data from probation and parole,
5 the Pennsylvania Board of Probation and
6 Parole. The parole data that we work with is
7 from the DOC tables, and they are primarily
8 things such as determining when people are
9 released on their initial parole to determine
10 length of stay and recidivism.
11 **Q Can you explain to me what it means**
12 **for you to analyze those things, length of**
13 **stay and recidivism?**
14 A I'll need a clarification.
15 **Q Okay. Perhaps this is the easiest**
16 **way to ask it: Are you preparing reports for**
17 **someone regarding these parole statistics?**
18 A Yes. Whenever I work with an ad hoc
19 parole query, it's usually a very defined
20 question presented from some outside agency or
21 office and I respond through Bob to them.
22 **Q Okay. Let me backtrack a minute.**
23 **What I had wanted to find out was whether --**
24 **let me put this in context. Am I correct that**
25 **without any ad hoc inquiry, you generate**

10

1 Mark Emery
2 **regular reports regarding misconduct and drug**
3 **testing and some other issues?**
4 A Correct.
5 **Q Okay. Do you without any ad hoc**
6 **inquiry generate any regular reports regarding**
7 **parole, length of stay, or recidivism?**
8 A Yes and no. Yes to recidivism
9 because I assist Bob Flaherty in preparing our
10 annual recidivism study, but no to parole in
11 that sense, only in the sense of recidivism.
12 **Q Okay. But is part of the recidivism**
13 **study to make note of length of incarceration**
14 **as it relates to recidivism?**
15 A No.
16 **Q What are the factors that you look**
17 **at or report in the recidivism study?**
18 A Primarily demographics: gender,
19 race -- there's a third. It escapes me at
20 this point but it's not -- I know what it's
21 not. It's not, for example, the crime or the
22 length of stay, but it's demographics and
23 whether or not the person is on their initial
24 parole or re-parole.
25 **Q And to whom is that annual study**

11

1 Mark Emery
2 **given? Who is it prepared for?**
3 A The executive staff, Secretary Beard
4 and his deputy secretaries. And those
5 statistics are also published through the DOC
6 web site.
7 **Q So am I correct then that any work**
8 **that you do with length of stay and how**
9 **quickly after a minimum an inmate is paroled**
10 **is purely in response to ad hoc inquiries?**
11 A Correct.
12 **Q And by the way, how long have you**
13 **been in your current position?**
14 A About 19 months.
15 **Q And where did you work before that?**
16 A I worked for the Department of
17 Corrections, same office. I was a grants
18 administrator for three years.
19 **Q And how about prior to that?**
20 A With the Department of Health in the
21 Bureau of Chronic Disease Intervention.
22 **Q Was that also a position in which**
23 **you worked primarily with data and statistics?**
24 A Yes.
25 **Q And what about prior to the**

12

3 (Pages 9 to 12)

1 **Mark Emery**
2 **Department of Health?**
3 A I was with the Department of Public
4 Welfare and I was a welfare worker.
5 **Q What training do you have in data**
6 **analysis and statistics?**
7 A I served for about 12 years in the
8 military as an intelligence analyst and
9 received professional education in the
10 analytical process through the military at the
11 entry and then there was essentially two other
12 courses, an apprentice course and a journeyman
13 course. In college, I had a statistics class,
14 what's called finite math -- these are things
15 that are specific to statistical analysis --
16 finite math, which dealt with statistics and
17 proper and improper interpretation of them,
18 what was termed innumeracy, which is not a
19 word. I'm sorry.
20 **Q Where did you go to college?**
21 A Indiana University of Pennsylvania.
22 **Q And do you have a degree or**
23 **concentration in statistics or math?**
24 A No.
25 **Q What did you major in?**

13

1 **Mark Emery**
2 A English lit.
3 **Q Me too. Now, you stated that you do**
4 **not have data from the parole board; is that**
5 **correct?**
6 A We do not have access to that data.
7 **Q What data regarding length of stay**
8 **and parole do you have access to?**
9 A None that we don't create or
10 generate. We have access to data tables on
11 our servers, and then we would develop queries
12 from the data tables to give us length of stay
13 and other parole-related questions.
14 **Q What raw data is contained in those**
15 **tables?**
16 A There are probably 200 data tables
17 on different servers. And the type of data on
18 there ranges, everything, demographics,
19 sentence, sentence length, more recently
20 inmate testing, inmate diagnostic testing.
21 Excuse me. So it's a lot.
22 **Q Do you have any tables regarding**
23 **inmate completion of prescriptive programs?**
24 A No.
25 **Q So, for instance, would these data**

14

1 **Mark Emery**
2 **tables contain the minimum and maximum**
3 **sentence for DOC inmates?**
4 A Yes.
5 **Q And the crime for which they were**
6 **sentenced?**
7 A The data tables will show the
8 controlling offense but not all of the
9 convictions.
10 **Q Is another way to say that the**
11 **primary offense?**
12 A Yes.
13 **Q So, for instance, if an inmate was**
14 **convicted of one count of rape and a count of**
15 **assault and a count of resisting arrest, how**
16 **would the sentences for -- would you be able**
17 **to tell the breakdown in sentencing for those**
18 **convictions or only know the total length of**
19 **time expected to be served?**
20 MS. SMITH: Objection to the
21 form.
22 Do you understand the question?
23 THE WITNESS: I believe I do.
24 MS. SMITH: Then you can answer
25 it to the best of your ability.

15

1 **Mark Emery**
2 **THE WITNESS:** It didn't work
3 like that. The inmates will serve
4 concurrent sentences or one after the
5 other. So it -- and if someone had
6 multiple convictions, they were to serve
7 one after the other, they would have an
8 inmate number that would change with the
9 new sentence. And then the data field
10 such as their min, their max, and the
11 sentence length would also change. So
12 they're overwritten if a new sentence
13 starts. So there's no aggregate min, max
14 for an inmate if they're convicted of
15 multiple offenses and they're serving
16 them one after the other.
17 **BY MS. ROPER:**
18 **Q Okay. And if they are serving them**
19 **concurrently, would you only have information**
20 **about the primary offense?**
21 A Yes.
22 **Q Do you know the source of that data,**
23 **how it gets into the data tables you access?**
24 A Yes. The data is put in by clerks
25 at the diagnostic centers for men in Camp

16

4 (Pages 13 to 16)

1 Mark Emery
 2 Hill, for women in Muncy. Primarily, that's
 3 where the data is put in. However, it's
 4 overwritten at SCIs if information changes.
 5 **Q And would an example of that be if**
 6 **an inmate's sentence is modified on appeal,**
 7 **then that information would be changed by the**
 8 **folks at the institution?**
 9 A I would speculate yes. I've
 10 never -- I don't have familiarity with the
 11 appeal and how they change the records.
 12 **Q Now, do you also have access to raw**
 13 **data about when an inmate is paroled?**
 14 MS. SMITH: Objection to the
 15 form. Do you mean after his minimum?
 16 MS. ROPER: Yes.
 17 MS. SMITH: You're talking
 18 about how long after his minimum he's
 19 paroled? Is that what you're talking
 20 about?
 21 MS. ROPER: Not yet.
 22 BY MS. ROPER:
 23 **Q So my first question is, what**
 24 **information do you have regarding when an**
 25 **inmate is paroled? What information do you**

17

1 Mark Emery
 2 receive?
 3 A We have a data table called MOVREC,
 4 M-O-V-R-E-C. And the MOVREC table creates a
 5 new record every time there is some type of
 6 move for an inmate, be it a transfer, rollover
 7 to a new sentence. So when an inmate is
 8 paroled, in the MOVREC there will be a new
 9 record created with the sentence status code
 10 changing to P and the parole status code
 11 either SP or RP, state parole, which is for
 12 initial parole, and RP is re-parole. The
 13 MOVREC is not overwritten unlike a lot of the
 14 other data tables. A new record is always
 15 created.
 16 **Q And do you know who enters the data**
 17 **that appears in the MOVREC database?**
 18 A The clerks at the SCIs. SCI is
 19 state correction institution.
 20 **Q Now, as you've made reference to,**
 21 **you're here because of an ad hoc inquiry that**
 22 **you received. Can you tell me what**
 23 **information you were asked to produce?**
 24 A I responded to an e-mail inquiry. I
 25 have a copy of it here.

18

1 Mark Emery
 2 **Q May I see that?**
 3 MS. SMITH: Yes. I'll waive
 4 any attorney-client privilege for that.
 5 MS. ROPER: Thank you. I'm
 6 trying to find a way to get around it.
 7 MS. SMITH: I'm not sure there
 8 is a way.
 9 (Discussion off the record.)
 10 BY MS. ROPER:
 11 **Q Do you have the original e-mail**
 12 **saying what it was that you should retrieve?**
 13 A I thought it was on this. It's not.
 14 No, I do not.
 15 **Q Is that something that you would be**
 16 **able to retrieve from your e-mail system?**
 17 A I don't think so. I get those
 18 annoying administrator things about my thing's
 19 over its limit, so I periodically have to
 20 purge.
 21 **Q Understanding that the inquiry may**
 22 **have evolved over time, can you tell me to the**
 23 **best of your recollection what the initial**
 24 **inquiry asked you for?**
 25 A I believe I was asked to expand upon

19

1 Mark Emery
 2 an earlier inquiry about the number of persons
 3 convicted of rape and how many were paroled.
 4 I believe I was asked to expand because I did
 5 within one year and then more than one year,
 6 and I think they needed it broken down for
 7 one, two, and three years, one, two, and three
 8 years after minimum.
 9 **Q Would it be accurate to say that**
 10 **what you were trying to determine was for**
 11 **people with the primary offense of rape how**
 12 **soon after their minimums they were paroled in**
 13 **a series of years?**
 14 A It would be accurate with one
 15 clarification. It was only for the offense
 16 code CC3121, the most common offense code for
 17 rape or sexual assault. It was only drawn for
 18 that offense code. So the other offense codes
 19 listed are not included in the data table.
 20 That offense code was part of the original
 21 query.
 22 **Q So what you set out to do was for**
 23 **this particular type of rape offense, one**
 24 **offense code, you set out to determine how**
 25 **soon after their minimums inmates sentenced**

20

5 (Pages 17 to 20)

1 **Mark Emery**
2 **under this code were being paroled in**
3 **specified years; is that correct?**
4 **MS. SMITH:** Okay. I was going
5 to object except you said in specified
6 years. I think that is probably where
7 you should start, from that point, in
8 terms of the query. It wasn't just
9 tracking an inmate and seeing how soon.
10 It was seeing in a given year how many
11 inmates were paroled. I believe that was
12 my query.
13 **MS. ROPER:** Let me try to
14 rephrase that.
15 **BY MS. ROPER:**
16 **Q Did you understand what you were**
17 **doing to be comparing for the years 1995 and**
18 **subsequent how soon inmates with this primary**
19 **offense code were getting paroled after their**
20 **minimums?**
21 **MS. SMITH:** Objection to the
22 form.
23 But if you understand, you can
24 answer.
25 **A I believe I understand the question,**

21

1 **Mark Emery**
2 and, yes, I believe that's what I was seeking
3 to accomplish.
4 **Q Okay. Well, let's take this year by**
5 **year. And it might get a little bit**
6 **repetitive, but it will be easier to explain.**
7 **MS. SMITH:** Off the record.
8 (Discussion off the record.)
9 **BY MS. ROPER:**
10 **Q So, for instance, for the year 1995,**
11 **can you tell me what information you looked at**
12 **and what procedure you went through to obtain**
13 **what you were looking for?**
14 **A Yes. 1995, for 1995 I looked at a**
15 **data table that has general inmate information**
16 **and contains the offense code for the**
17 **controlling offense, for the primary offense.**
18 **So I ran a query to give me a base table of**
19 **inmates with the primary offense code CC3121.**
20 **That number is represented as 1,816 in 1995.**
21 **There was nothing else as far as drawing down**
22 **that number. It was just how many people had**
23 **that code.**
24 **Q And does that mean that there were**
25 **1,816 inmates presently within the custody of**

22

1 **Mark Emery**
2 **the Department of Corrections with that**
3 **primary offense code?**
4 **A Correct, in our SCIs.**
5 **Q Right, not in county jail?**
6 **A Or our community corrections**
7 **centers.**
8 **Q Okay. Go on. What was the next**
9 **step?**
10 **A The next step to find the parole**
11 **total was to match that base table with the**
12 **MOVREC file to find any of those inmates who**
13 **had a sentence status code of P and a parole**
14 **status code of SP for initial parole, state**
15 **parole or initial parole, and a move code of**
16 **D, which is for delete. That just means**
17 **they're out of our system. The record itself**
18 **is not deleted. It's just it's a move code.**
19 **So that tells you who received initial parole**
20 **in 1995.**
21 **Q And were there 53 such inmates?**
22 **A There were. For the max out, I**
23 **matched through the MOVREC file move code D --**
24 **I guess I should also clarify. There's also a**
25 **move date and I cut it down to 1995. There's**

23

1 **Mark Emery**
2 a move date in the MOVREC file. For max out,
3 who was move code D, sentence status code is
4 SC for sentence complete, and parole status
5 code is NA, which means they were never
6 paroled.
7 **Q So of the 1,816 inmates in the**
8 **Department of Corrections' custody in 1995**
9 **with the primary offense code that you've**
10 **previously mentioned, there were 36 who had**
11 **been released because they completed their**
12 **maximum in that year and 53 who had been**
13 **released on parole on initial parole that**
14 **year?**
15 **A Yes, with one clarification for max**
16 **out. There are two types of max outs.**
17 **There's a true max out and then a parole max**
18 **out. Essentially, if someone was released on**
19 **parole, they violate parole, they come back on**
20 **that sentence, and then they end up maxing**
21 **out, those people are not included in 36, the**
22 **number 36. Thirty-six is folks who have never**
23 **been on parole. They're what we call true max**
24 **outs.**
25 **Q Okay, rather than people who were**

24

6 (Pages 21 to 24)

1 **Mark Emery**
2 **paroled and then had their parole revoked and**
3 **ended up fulfilling the rest of their sentence**
4 **in an SCI?**
5 A Yes. So that's how I got the parole
6 and the max out number. Then for the next
7 three, four rows within one year, after one
8 year, after two years, and so forth, that is
9 when I match it with a field and a table with
10 their min date, their minimum date. I match
11 that and then I see of those who were paroled,
12 what was their min date and how far away from
13 their min date were they when they were
14 paroled. So the 1,816 includes all inmates,
15 irrespective of whether or not they've
16 exceeded their min.
17 Q So for 1995, we're looking at 53
18 initial paroles for people with this offense
19 code. Twenty-seven of them were paroled
20 within a year of completing their minimums.
21 Twenty-six of them were paroled more than one
22 year after completing their minimums.
23 Correct?
24 A Correct.
25 Q And then the two years and three

25

1 **Mark Emery**
2 **years are a subset, not a complete listing but**
3 **a subset of the number 26?**
4 A Correct.
5 Q And what is the after one year
6 total?
7 A That is adding the 26 for after one
8 year and the true max outs.
9 MS. ROPER: At this point let
10 me mark Emery Exhibit 2 because it's the
11 color chart and it might be easier at
12 this point.
13 (E-mail, 10/24/06, to Roper
14 from Smith marked Emery Exhibit 2.)
15 (Discussion off the record.)
16 MS. ROPER: Let's mark this as
17 Emery Exhibit 3. I may refer back to 2.
18 I don't know.
19 I'd like to take a couple
20 minutes, five minutes so I can finish
21 reading Emery Exhibit 1. Stretch your
22 legs, walk around, whatever you'd like.
23 (Data table marked Emery
24 Exhibit 3.)
25

26

1 **Mark Emery**
2 BY MS. ROPER:
3 Q Let's look at Emery 3. So if we
4 look at this table -- and I'm going to direct
5 you to three lines in particular, the line
6 parole total and then within one year and
7 after one year. So am I correct in stating
8 that in 1995, of the total inmates with this
9 offense code who were paroled, it's almost
10 50/50 how many of them were being paroled upon
11 completion of their minimum and how many of
12 them were being paroled after some greater
13 length of time?
14 A Yes.
15 Q Now, in the next year, 1996, it's a
16 smaller -- it's a much smaller number we're
17 looking at, only 15 paroled as opposed to 53.
18 Of those 15, fewer were paroled within a year
19 of the minimum than waited longer than the
20 completion of their minimum; correct?
21 A Yes.
22 Q And as we continue looking across
23 the years, we find that to be repeated so that
24 in every year after 1995, a greater number of
25 inmates with this offense code were being

27

1 **Mark Emery**
2 **paroled later than in the first year after**
3 **their minimums were completed?**
4 A Yes.
5 Q By the way, why did you choose this
6 offense code?
7 A It was specified in the original
8 query.
9 Q Did you perform the same sort of
10 analysis for any other offense code?
11 A No.
12 Q Let's look at Emery 1. This is the
13 copy of the e-mails you brought with you. And
14 I'm going to look at the first page. Now,
15 carrying over from the first page to the
16 second page of Emery 1, I see a long list of
17 sex offenses; correct?
18 A Yes.
19 Q And their offense codes?
20 A Yes.
21 Q And, for instance, the first one is
22 CC3121, forcible rape. That is the offense
23 code you analyzed; correct?
24 A Correct.
25 Q And the second one, CC3121-1, other

28

7 (Pages 25 to 28)

<p>1 Mark Emery</p> <p>2 Part II offenses, if you had run the same</p> <p>3 analysis with that offense code, there would</p> <p>4 have been different numbers; correct?</p> <p>5 A Yes.</p> <p>6 Q Do you have any reason -- do you</p> <p>7 have any belief or opinion as to whether those</p> <p>8 numbers would have shown a different</p> <p>9 relationship between first year parole and</p> <p>10 parole more than a year after completing the</p> <p>11 minimum?</p> <p>12 MS. SMITH: Objection to the</p> <p>13 form. Your question assumes a</p> <p>14 relationship in Emery 3.</p> <p>15 BY MS. ROPER:</p> <p>16 Q You can answer the question if you</p> <p>17 understand it.</p> <p>18 A Could you repeat the question?</p> <p>19 Q Sure. Having not performed the same</p> <p>20 analysis on say CC3121-1, do you have any</p> <p>21 opinion or any understanding of how the</p> <p>22 numbers would have played out for that offense</p> <p>23 code?</p> <p>24 A No. And likely they would have had</p> <p>25 smaller numbers and, therefore, anything that</p> <p style="text-align: right;">29</p>	<p>1 Mark Emery</p> <p>2 Q Are you more confident, however,</p> <p>3 that 3121 would be a greater number than</p> <p>4 3121-1, -2, -3, -4?</p> <p>5 A Yes.</p> <p>6 Q Can you explain to me what CC3121-1,</p> <p>7 -2, -3, -4 indicate?</p> <p>8 A No.</p> <p>9 Q So you don't know the difference?</p> <p>10 A No, I do not know. That's coding</p> <p>11 done by our records department.</p> <p>12 Q Now, on the second page, I'm looking</p> <p>13 at the paragraph of text after the long list</p> <p>14 of sexual assault offenses. And the first</p> <p>15 sentence -- by the way, this is something you</p> <p>16 wrote; correct?</p> <p>17 A Correct.</p> <p>18 Q And in the first sentence, you</p> <p>19 write: As you can see, any change in the</p> <p>20 coding changes the number of inmates counted</p> <p>21 for this query.</p> <p>22 That's what we basically just</p> <p>23 discussed, that for any of these offense codes</p> <p>24 there will be a unique total number of</p> <p>25 inmates?</p> <p style="text-align: right;">31</p>
<p>1 Mark Emery</p> <p>2 might be present would be statistically</p> <p>3 worthless to look at them individually.</p> <p>4 Q So by that do I understand that</p> <p>5 CC3121, the code you used, is the most common</p> <p>6 offense code for inmates who are convicted of</p> <p>7 rape?</p> <p>8 A Correct.</p> <p>9 Q And, therefore, yielded the largest</p> <p>10 sample size for you to look at?</p> <p>11 A Correct, it would have.</p> <p>12 Q Do you know when --</p> <p>13 A Well, actually, now that I look at</p> <p>14 statutory rape, I believe we do have a great</p> <p>15 deal of statutory rape offenses, CC3122.</p> <p>16 Q Okay. But in terms of forcible</p> <p>17 rape -- do you have an understanding of what</p> <p>18 statutory rape means?</p> <p>19 A Yes. The more I look over the list,</p> <p>20 IDSI, involuntary deviant sexual intercourse,</p> <p>21 I'm not really -- I really am not so certain</p> <p>22 that -- I know we have a number of IDSI</p> <p>23 inmates and I wouldn't be able to ballpark how</p> <p>24 close that is to the number for 3121, in other</p> <p>25 words, one which might be larger.</p> <p style="text-align: right;">30</p>	<p>1 Mark Emery</p> <p>2 A Correct.</p> <p>3 Q The next sentence, the manual coding</p> <p>4 has no effect on sentencing parole, et cetera,</p> <p>5 can you explain what that means?</p> <p>6 A What I meant by that is that the</p> <p>7 coding is an administrative code and, as such,</p> <p>8 it doesn't trigger any type of -- it has no</p> <p>9 relationship -- how can I explain this? It's</p> <p>10 an administrative code. And in terms of --</p> <p>11 I'm just trying to think how I can explain it.</p> <p>12 As an administrative code, it really</p> <p>13 doesn't -- it's an administrative code on a</p> <p>14 data table and really doesn't exist outside of</p> <p>15 our data table, so to speak. So I don't</p> <p>16 think, for example --</p> <p>17 Q Well, let me ask you a question and</p> <p>18 see if I can clarify what you're trying to get</p> <p>19 at. Is it your understanding that there is a</p> <p>20 different statutory definition for forcible</p> <p>21 rape than for statutory rape?</p> <p>22 A Yes.</p> <p>23 Q Those are different crimes?</p> <p>24 A Yes.</p> <p>25 Q But when we look at Code 3121 and</p> <p style="text-align: right;">32</p>

1 Mark Emery
 2 compare it to 3121-1, -2, -3, -4, is what
 3 you're telling me that you do not believe
 4 there is a different crime associated with
 5 each of those codes?
 6 A No. I really -- no, I wouldn't say
 7 that. I don't know what's entailed so there
 8 could be, there could not be. I don't code
 9 the offenses. It would be our records
 10 department that does it. And I imagine they
 11 have a criteria.
 12 Q But you don't know why someone would
 13 be a 3121 as opposed to a 3121-1?
 14 A Correct. Yeah, I see how that
 15 sentence can be confusing. I apologize.
 16 Q No, there's no need to apologize.
 17 I'm just trying to figure out what you meant.
 18 A It's more of inside my head. It has
 19 no effect for developing the query. It has no
 20 effect in answering the question that was
 21 given to me because it's an administrative
 22 code. I guess what I'm saying is I would have
 23 used the same process, and, therefore, the
 24 answers in terms of sentencing and parole are
 25 sort of independent. I'm just being more

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1 Mark Emery
 2 confusing.
 3 Q Let me ask you this: You were asked
 4 to perform an analysis on a specific offense
 5 code; correct?
 6 A Yes.
 7 Q And if you had instead been asked to
 8 determine the same figures for all rapists
 9 confined within the Department of Corrections,
 10 you would have done something different;
 11 correct?
 12 A I would have included other offense
 13 codes.
 14 Q Okay. Otherwise, your analysis
 15 would have been the same; correct?
 16 A The same methodology.
 17 Q And is that what you mean by the
 18 second sentence of this paragraph?
 19 A Yes.
 20 Q And is that the reason why a couple
 21 of sentences further on you say that it would
 22 be a false conclusion to say that the table we
 23 have looked at can tell us the rate of parole
 24 for rapists?
 25 A Yes.

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1 Mark Emery
 2 Q But the table we have looked at can
 3 show us the rate of parole for this specific
 4 offense code; correct?
 5 A Yes.
 6 Q A couple sentences further on, you
 7 say: I may define the terms differently and
 8 easily draw the number higher or lower.
 9 Is what you're talking about there
 10 including different or more offense codes to
 11 get a different total number and, therefore,
 12 different composite numbers?
 13 A Taken together, the two or three
 14 sentences, what I was trying to convey is to a
 15 layperson they would use the term "rapist" and
 16 not, for example, know that there are several
 17 different offense codes. And I guess when I
 18 say that it's more -- the inflexion isn't
 19 there, but it's I may define the terms
 20 differently. In other words, lay people can
 21 define these terms differently and not
 22 understand that there's subtleties that need
 23 to be taken into account for. So if the
 24 layperson -- and I use myself as sort of the
 25 example. If they broadly define it or

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1 Mark Emery
 2 misdefine -- that's not even a word -- the
 3 term differently, they can have this number go
 4 higher or lower and perhaps still not get
 5 exactly what they think that they're looking
 6 for.
 7 Q Okay. So if we were looking to draw
 8 conclusions about parole of rapists, because
 9 that term does not directly correspond to a
 10 particular offense code, we would not be able
 11 to draw these kinds of conclusions from the
 12 analysis you did? Let me withdraw that
 13 question and try a new one.
 14 Am I correct that your concern is
 15 with people thinking that this table says
 16 something about the parole of rapists as
 17 opposed to the parole of inmates with a single
 18 offense code?
 19 A That's one of my concerns.
 20 Q Okay. Can you explain what your
 21 other concerns would be?
 22 A Well, I listed them. And some of
 23 them, for example, is -- we kind of touched on
 24 this earlier is there's no indication of
 25 inmate rehabilitation programming, whether

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<p>1 Mark Emery</p> <p>2 they had succeeded, failed, refused treatment,</p> <p>3 whether they've admitted guilt, whether</p> <p>4 they've shown remorse. These are all factors</p> <p>5 that could play in and are simply not</p> <p>6 reflected and can't be captured or at least</p> <p>7 aren't captured by our current data tables.</p> <p>8 Q Well, let me ask you a question</p> <p>9 about that. Let's take just one factor that I</p> <p>10 understand is a factor concerning parole,</p> <p>11 whether or not the inmate has accepted</p> <p>12 responsibility for the crime. Your table does</p> <p>13 not distinguish in any of these numbers</p> <p>14 between inmates who have accepted</p> <p>15 responsibility for their crimes and inmates</p> <p>16 who in the view of the department or the</p> <p>17 parole board have not accepted responsibility</p> <p>18 for their crime; correct?</p> <p>19 A Correct.</p> <p>20 Q Do you have access to any data</p> <p>21 tables that would enable you to factor that</p> <p>22 consideration into the analysis you did?</p> <p>23 A No, we don't have access. And I</p> <p>24 don't know if probation and parole even has</p> <p>25 the tables, but that would be probation and</p> <p style="text-align: right;">37</p>	<p>1 Mark Emery</p> <p>2 edit checks that keep database tables clean</p> <p>3 may not have been in place, can you explain to</p> <p>4 me what you mean by that?</p> <p>5 A Yes. When you design a database,</p> <p>6 you can lock down the fields so that you can</p> <p>7 only enter numbers or text less than 25</p> <p>8 spaces. You can define the fields. These are</p> <p>9 data tables that were never really designed</p> <p>10 for database use. They were just more for</p> <p>11 information collection. So human error can</p> <p>12 come into here in anything from typing in the</p> <p>13 wrong code to misspelling names to wrong</p> <p>14 gender to all these normal edit checks that a</p> <p>15 database will stop you with. Some of those</p> <p>16 edit checks aren't in place to stop fat finger</p> <p>17 problems, just hitting the wrong key. Now,</p> <p>18 some are in place, but the older records, you</p> <p>19 know, they were sort of migrated from the</p> <p>20 system that we originally used into our</p> <p>21 current, using Access, Microsoft Access. Some</p> <p>22 of the older data is just not as clean as it</p> <p>23 should be.</p> <p>24 Q When you say "older data," give me a</p> <p>25 year when you think it might have improved.</p> <p style="text-align: right;">39</p>
<p>1 Mark Emery</p> <p>2 parole and we don't have access to their data</p> <p>3 tables.</p> <p>4 Q Now, similarly, the next thing that</p> <p>5 you've listed here is there's no indication of</p> <p>6 inmate misconduct history, which also can</p> <p>7 affect how soon someone is paroled after the</p> <p>8 minimum; correct?</p> <p>9 A I believe that's one of the factors,</p> <p>10 but it is correct that it has no -- there's no</p> <p>11 indication of misconduct history in these</p> <p>12 numbers.</p> <p>13 Q Is the reason you mention misconduct</p> <p>14 history because you believe that to be a</p> <p>15 factor in parole?</p> <p>16 A I speculated. My specialty is not</p> <p>17 parole so I speculated.</p> <p>18 Q But that is the reason you put it</p> <p>19 here because you speculated that it was a</p> <p>20 factor in parole?</p> <p>21 A Correct.</p> <p>22 Q Now, the last sort of factor you've</p> <p>23 listed here, the data tables were not</p> <p>24 originally designed as database tables, they</p> <p>25 are raw information tables and as such many</p> <p style="text-align: right;">38</p>	<p>1 Mark Emery</p> <p>2 A I really can't because it's not like</p> <p>3 it happened in one month. My understanding --</p> <p>4 and this predated my time -- it was over a</p> <p>5 period of time. And we're still sort of</p> <p>6 updating our systems as we go. Otherwise, it</p> <p>7 would have just been too much money I guess.</p> <p>8 I have no idea.</p> <p>9 Q So when we look at the chart on</p> <p>10 Emery 3 and we see there are columns for 1995,</p> <p>11 1996, 1997, 1998, et cetera, up through</p> <p>12 2005 --</p> <p>13 MS. SMITH: 2006 year to date.</p> <p>14 Q -- 2006 year to date, is there any</p> <p>15 particular year or years that you would</p> <p>16 identify as having more or less reliable data?</p> <p>17 A No. I think the table is okay</p> <p>18 because the fields I used, I think the</p> <p>19 likelihood of getting bad data in those fields</p> <p>20 is probably -- the likelihood is not very</p> <p>21 great. So I think it's okay. It's just I</p> <p>22 guess I was just more cautious about the</p> <p>23 coding because again that's an administrative</p> <p>24 code and I'm just not sure whether that</p> <p>25 would -- how much that would affect it and if</p> <p style="text-align: right;">40</p>

<p>1 Mark Emery</p> <p>2 there were entry code errors in there.</p> <p>3 Q When you say coding, you're pointing</p> <p>4 to the offense code?</p> <p>5 A Offense code. I'm sorry.</p> <p>6 Q But then looking back at the long</p> <p>7 table on Emery 3 just to make sure I'm correct</p> <p>8 here and quell the panic that has arisen in</p> <p>9 me, you have no reason to believe that there's</p> <p>10 any difference in the reliability of these</p> <p>11 numbers from 1995 to 2005; is that correct?</p> <p>12 A Correct, because they seemed to hold</p> <p>13 somewhat consistent, which would make sense if</p> <p>14 the data was clean and reliable.</p> <p>15 Q Now, I understand that you don't do</p> <p>16 the offense coding, but do you know of any</p> <p>17 changes in the way that offense codes were</p> <p>18 assigned from say 1995 through 2005?</p> <p>19 A I am not familiar with the data</p> <p>20 entry of offense codes.</p> <p>21 Q Again, what I want to do is refer</p> <p>22 back to the long chart on Emery 3. You can't</p> <p>23 tell me any differences in what the use of</p> <p>24 this particular offense code means from 1995</p> <p>25 through 2005?</p> <p style="text-align: right;">41</p>	<p>1 Mark Emery</p> <p>2 Q But because you don't actually deal</p> <p>3 firsthand with parole, you don't know whether</p> <p>4 any of these things actually has an effect on</p> <p>5 parole or whether any of these things has been</p> <p>6 treated differently since 1995?</p> <p>7 A Correct.</p> <p>8 Q Are you familiar with the types of</p> <p>9 data kept by the parole board?</p> <p>10 A No.</p> <p>11 MS. ROPER: Can we take just a</p> <p>12 few minutes?</p> <p>13 MS. SMITH: Sure.</p> <p>14 (Short recess.)</p> <p>15 MS. ROPER: So the parties are</p> <p>16 stipulating that the offense code</p> <p>17 assigned to the plaintiff in this case</p> <p>18 is, in fact, 3121, the same offense code</p> <p>19 that Mr. Emery used in doing his</p> <p>20 analysis.</p> <p>21 And with that, unless I have</p> <p>22 some followup to your counsel's</p> <p>23 questions, I am finished. And thank you.</p> <p>24 THE WITNESS: Thank you.</p> <p>25</p> <p style="text-align: right;">43</p>
<p>1 Mark Emery</p> <p>2 A Correct.</p> <p>3 Q Back to Emery 1, in your indented</p> <p>4 list of factors here where you say no notation</p> <p>5 for changes in sentencing guidelines, are you</p> <p>6 aware of any changes in sentencing guidelines</p> <p>7 for the crime of forcible rape from 1995</p> <p>8 through 2005?</p> <p>9 A I am only aware in the sense that</p> <p>10 when I was originally e-mailed about the</p> <p>11 query, I was told to start at 1995 because</p> <p>12 there was some type of change. However, I</p> <p>13 have not read the laws or any administrative</p> <p>14 policies regarding that.</p> <p>15 Q Okay. So you don't have any view as</p> <p>16 to how anything concerning this sentencing</p> <p>17 would have changed these numbers?</p> <p>18 A Correct.</p> <p>19 Q Now, am I correct again looking back</p> <p>20 at the indented list on the second page of</p> <p>21 Emery 1 that this is in part a list of things</p> <p>22 that you surmised or speculated might change</p> <p>23 how soon after a minimum an inmate was</p> <p>24 paroled?</p> <p>25 A Some of those are, yes.</p> <p style="text-align: right;">42</p>	<p>1 Mark Emery</p> <p>2 BY MS. SMITH:</p> <p>3 Q Does the chart that has been marked</p> <p>4 as Emery 3 show how many inmates in a given</p> <p>5 year were considered for parole?</p> <p>6 A No.</p> <p>7 Q Do you have access to that</p> <p>8 information?</p> <p>9 A No. I would have to ask probation</p> <p>10 and parole that information.</p> <p>11 Q And you're assuming that they would</p> <p>12 have access to how many convicted rapists were</p> <p>13 considered for parole in a given year?</p> <p>14 A I am assuming that, yes.</p> <p>15 Q Would that information be necessary</p> <p>16 to determine a rate of parole in a given year?</p> <p>17 A Yes, yes. If you would have a base,</p> <p>18 a base number of who are eligible and who are</p> <p>19 considered, then you'd find out how many of</p> <p>20 that pool were paroled. That would give you a</p> <p>21 rate of parole for that offense code.</p> <p>22 MS. SMITH: Thank you. I have</p> <p>23 nothing further.</p> <p>24 BY MS. ROPER:</p> <p>25 Q Just one followup question. Does</p> <p style="text-align: right;">44</p>

1	Mark Emery	1	Mark Emery
2	the chart marked as Emery 3, even though it	2	their min and have the offense code. So, yes,
3	doesn't provide us with a rate of parole for	3	you can call it a rate of parole, but it would
4	those who were considered, am I correct that	4	be one that I'd put an asterisk next to to try
5	it does provide us with a rate of parole for	5	to make sure we don't take too much of a
6	the offense code 3121 for those who were	6	conclusion from it. That's all.
7	eligible for parole in the designated years?	7	Q Okay. Let's not use the word "rate"
8	A No. It tells you how many were	8	then. But from this chart, we can determine
9	paroled, but for the rate, the reason why I	9	how many inmates with this offense code in
10	wouldn't say it gives you a rate is because of	10	each year were paroled essentially upon
11	the base number looking at 1995 of 1,816,	11	completion of minimum; correct?
12	that's the total population, but it's not the	12	A Yes.
13	total that were eligible for parole.	13	Q And we can also see how many were
14	Q Okay. But, for instance, we can get	14	paroled in that year who had waited longer
15	the rate of inmates with this offense code who	15	than the completion of their minimum?
16	first were eligible for parole in 1995 and	16	A Yes.
17	were paroled in 1995; correct?	17	MS. ROPER: Okay.
18	MS. SMITH: Objection to the	18	MS. SMITH: Nothing further?
19	form. Are you saying you can tell from	19	That's it?
20	this chart how many were considered for	20	MS. ROPER: Nothing further.
21	parole within the first year?	21	(Whereupon the deposition
22	MS. ROPER: No.	22	adjourned at 11:50 a.m.)
23	MS. SMITH: Could you just	23	---
24	restate your question?	24	
25	MS. ROPER: Okay. I'll try	25	
45		47	
1	Mark Emery	1	
2	again.	2	INDEX
3	BY MS. ROPER:	3	WITNESS: Page
4	Q Am I correct that from this chart we	4	MARK EMERY
5	can determine the number of and, therefore, a	5	By Mr. Roper 3, 44
6	rate of those with this offense code who first	6	By Ms. Smith 44
7	became eligible for parole in 1995 and were	7	
8	paroled during this first year of eligibility?	8	
9	A The term "rate," I'm not as	9	
10	comfortable with using it, but in a very broad	10	EXHIBITS
11	sense, yes, it would give you a rate in a very	11	No. Description Page
12	broad sense, but, you know, you may be	12	Emery 1 E-mail, 10/25/06, 3
13	comparing very dissimilar records. For	13	to Smith from
14	example, some of these might be lifers with	14	Emery
15	zero shot at parole.	15	Emery 2 E-mail, 10/24/06, 26
16	Q But in that case they would have no	16	to Roper from
17	minimum and they would not --	17	Smith
18	A But that 1,816 number, that was just	18	Emery 3 Data table 26
19	by the offense code. It wasn't by minimums.	19	
20	Now, I don't know the number of lifers. And I	20	
21	would suspect if there are lifers with this	21	
22	code, there aren't a great deal of them, but	22	
23	I'm just saying the folks who make it out on	23	
24	parole have, you know, a great deal of -- it's	24	
25	a very particular group that they've exceeded	25	
46		48	

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CERTIFICATE

I HEREBY CERTIFY that the proceedings, evidence, and objections are contained fully and accurately in the stenographic notes taken by me upon the deposition of MARK EMERY taken on December 18, 2006, and that this is a true and correct transcript of same.

Kimberly A. Otherwise
Certified Realtime Reporter
Notary Public

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Emery, Mark

From: Emery, Mark
Sent: Wednesday, October 25, 2006 9:56 AM
To: 'Smith, Beth'
Subject: FW: Requested Data

Reviewing my email, I'm not sure I actually attached the file I said I would. I apologize.

: was great working with you and I hope our office can assist in the future.

Mark

-----Original Message-----

From: Emery, Mark
Sent: Tuesday, October 24, 2006 11:38 AM
To: 'Smith, Beth'
Subject: RE: Requested Data

I've attached a scaled down copy of the spreadsheet used for the numbers. Hopefully, it can clear some things up.

The "After 1 year" does include those released "After 2 years" and "After 3 years." "After 2 years" includes those also listed in "After 3 years" because, by definition, an inmate staying eight years after Min has stayed both "after 2 years" and "after three years."

Refer to the 1998 tab and it might make more sense than me trying to explain it.

-----Original Message-----

From: Smith, Beth [mailto:bsmith@attorneygeneral.gov]
Sent: Monday, October 23, 2006 4:59 PM
To: Emery, Mark
Subject: RE: Requested Data

In your chart, you indicate that "Parole Total" (in black) includes (1) all rapists paroled in a given year within one year of their minimum sentence AND (2) those paroled after one year of their minimum. Based on our conversation, it was my understanding that the category "after one year" of minimum necessarily includes as subsets the numbers of rapists paroled after 2 years, after 3 years, and so forth.

I can follow this from 1995 to 1997. Then I get lost.

Starting in 1998 it seems that the category "after 1 year" does NOT include those paroled after 2 years, etc. The numbers for after 2 years and after 3 years are too large. What am I missing?

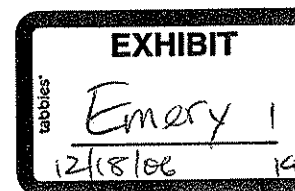
From: Emery, Mark [mailto:maemery@state.pa.us]
Sent: Monday, October 23, 2006 4:03 PM
To: Smith, Beth
Subject: RE: Requested Data

Beth,

Below is the latest table, with some updated numbers. There are several limiting factors that I should note. First, the offense code used was CC3121, "Rape." The offense codes are manually entered into our system and there are other offense codes that indicate forced sexual assault. Here is a brief sample:

CC3121	Forcible Rape	RAPE
CC3121-1	Other Part II Offenses	RAPE
CC3121-2	Other Part II Offenses	RAPE
CC3121-3	Other Part II Offenses	RAPE
CC3121-4	Other Part II Offenses	RAPE

10/25/2006



CC3121A	Other Part II Offenses	RAPE
CC3121C	Other Part II Offenses	RAPE OF A CHILD
CC3121D	Other Part II Offenses	RAPE OF A CHILD W/SERIOUS BODILY INJURY
CC3122	Statutory Rape	STATUTORY RAPE
CC3122.1	Statutory Rape	STATUTORY SEXUAL ASSAULT
CC3123	Forcible Rape	INVOLUNTARY DEVIATE SEXUAL INTERCOURSE
CC3123-1	Other Part II Offenses	INVOLUNTARY DEVIATE SEXUAL INTERCOURSE
CC3123-2	Other Part II Offenses	INVOLUNTARY DEVIATE SEXUAL INTERCOURSE
CC3123-3	Other Part II Offenses	INVOLUNTARY DEVIATE SEXUAL INTERCOURSE
CC3123-4	Other Part II Offenses	INVOLUNTARY DEVIATE SEXUAL INTERCOURSE
CC3123-5	Other Sex Offenses	INVOLUNTARY DEVIATE SEXUAL INTERCOURSE
CC3123A	Other Part II Offenses	INVOLUNTARY DEVIATE SEXUAL INTERCOURSE
CC3123C	Other Part II Offenses	INVOLUNTARY DEVIATE SEXUAL INTERCOURSE W/ A CH
CC3123D	Other Part II Offenses	INVOLUNTARY DEVIATE SEXUAL INTERCOURSE W/ A CH
CC3124	Other Sex Offenses	VOLUNTARY DEVIATE SEXUAL INTERCOURSE
CC3124.1	Other Part II Offenses	SEXUAL ASSAULT
CC3124.2	Other Part II Offenses	INSTITUTIONAL SEXUAL ASSAULT
CC3125	Other Part II Offenses	AGGRAVATED INDECENT ASSAULT
CC3125A	Other Part II Offenses	AGGRAVATED INDECENT ASSAULT
CC3125B	Other Part II Offenses	AGGRAVATED INDECENT ASSAULT OF A CHILD
CC3126	Other Sex Offenses	INDECENT ASSAULT
CC3126-1	Other Part II Offenses	INDECENT ASSAULT
CC3126-2	Other Part II Offenses	INDECENT ASSAULT
CC3126-3	Other Part II Offenses	INDECENT ASSAULT
CC3126-4	Other Part II Offenses	INDECENT ASSAULT
CC3126-5	Other Part II Offenses	INDECENT ASSAULT
CC3127	Other Sex Offenses	INDECENT EXPOSURE
CC3127B	Other Part II Offenses	INDECENT EXPOSURE WHEN PERSON PRESENT UNDER
CC3128	Other Part II Offenses	SPOUSAL SEXUAL ASSAULT
CC3128A	Other Part II Offenses	SPOUSAL SEXUAL ASSAULT
CC3128A1	Other Part II Offenses	SPOUSAL SEXUAL ASSAULT
CC3128A2	Other Part II Offenses	SPOUSAL SEXUAL ASSAULT
CC3128A3	Other Part II Offenses	SPOUSAL SEXUAL ASSAULT
CC3128B	Other Part II Offenses	SPOUSAL SEXUAL ASSAULT
CC3128B1	Other Part II Offenses	SPOUSAL SEXUAL ASSAULT
CC3128B2	Other Part II Offenses	SPOUSAL SEXUAL ASSAULT
CC3128B3	Other Part II Offenses	SPOUSAL SEXUAL ASSAULT

As you can see, any change in the coding changes the number of inmates counted for this query. The manual coding has no effect on sentencing, parole, etc. It's an internal data table for raw data collection. So, while it has no effect on the inmate's time served, it can effect data runs. The data set is also very specific and drawing broad conclusions from a narrowly defined subset can be complicated and it's not uncommon for intelligent folks to draw false conclusions. An example of a false conclusion would be, "The rate of parole for rapists is X%." As you see, there are several offense codes and varying definitions of rape/sexual assault. I may define the terms differently and easily draw the number higher or lower. Though an honest mistake, it remains a mistake. If folks look to draw conclusions from the data, please ensure they are mindful of the limiting factors:

Narrowly defined offense code

No notation for changes in sentencing guidelines

No indication of inmate rehabilitation programming success/failure/participation/refusal

No indication of inmate misconduct history

The parole subset **only** includes first time parole and does **not** include re-paroles.

The data tables were not originally designed as database tables. They are raw information tables and, as such, many edit checks that keeps database tables "clean" may not have been in place.

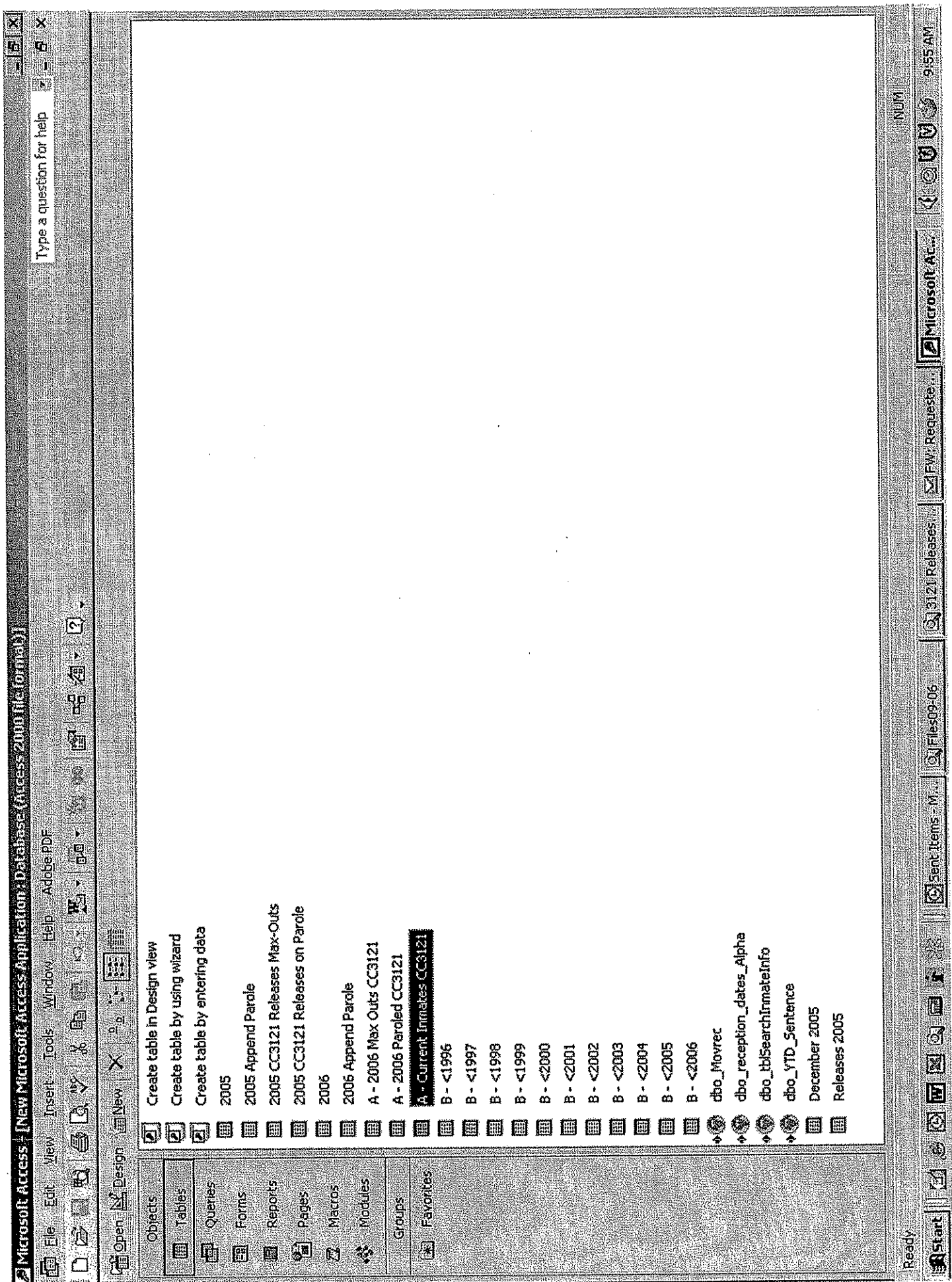
Of course, the table I send you is only raw data and doesn't include many qualitative factors used to determine eligibility for parole. Some examples are inmate participation in rehabilitation programs, inmate misconduct history, inmate mental capacity and home plan suitability, etc. I'm sure there are more factors, but parole is not my area of specialty.

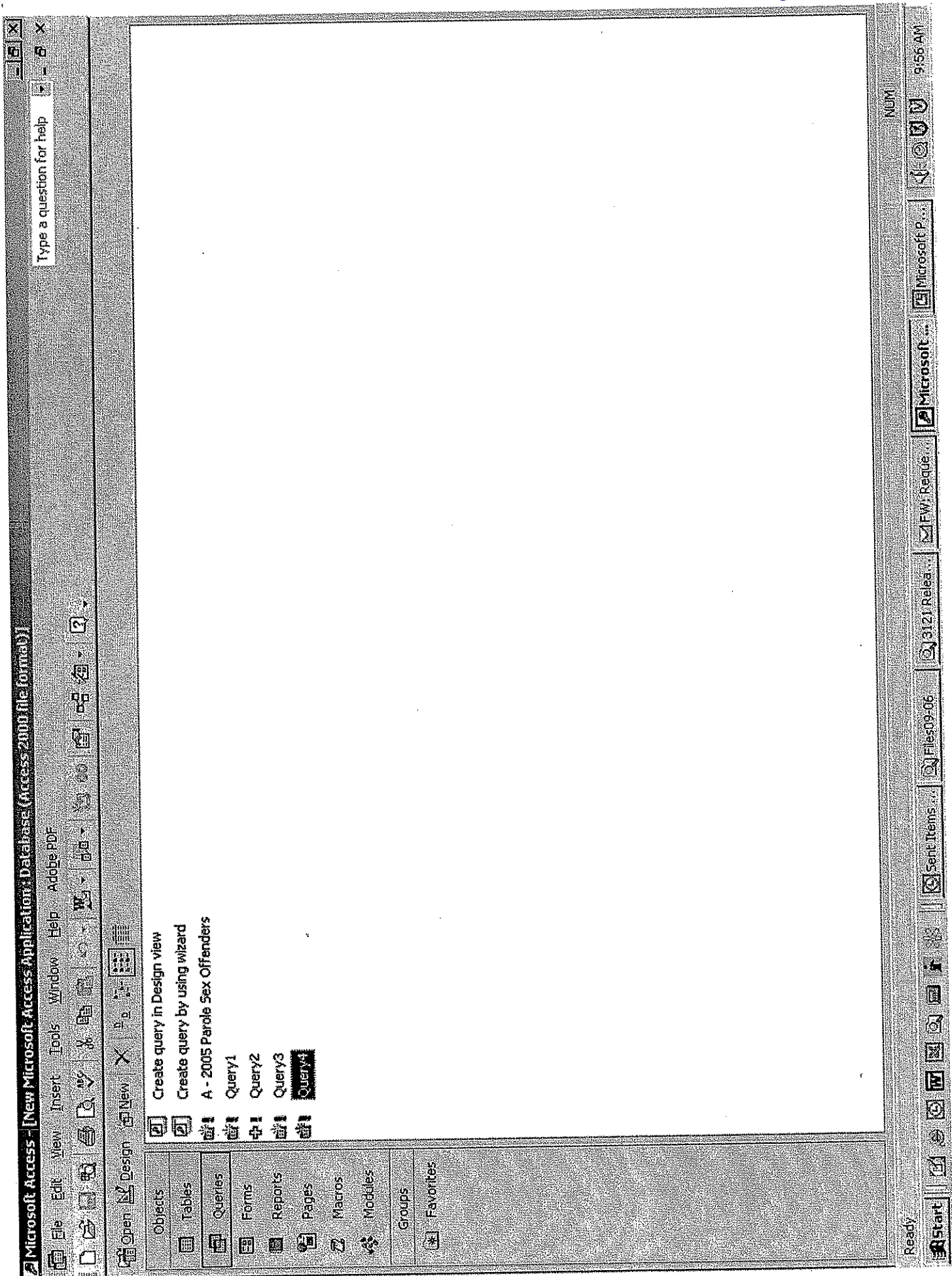
With all that said, here's the updated table (red and blue make purple, red and black make dark red):

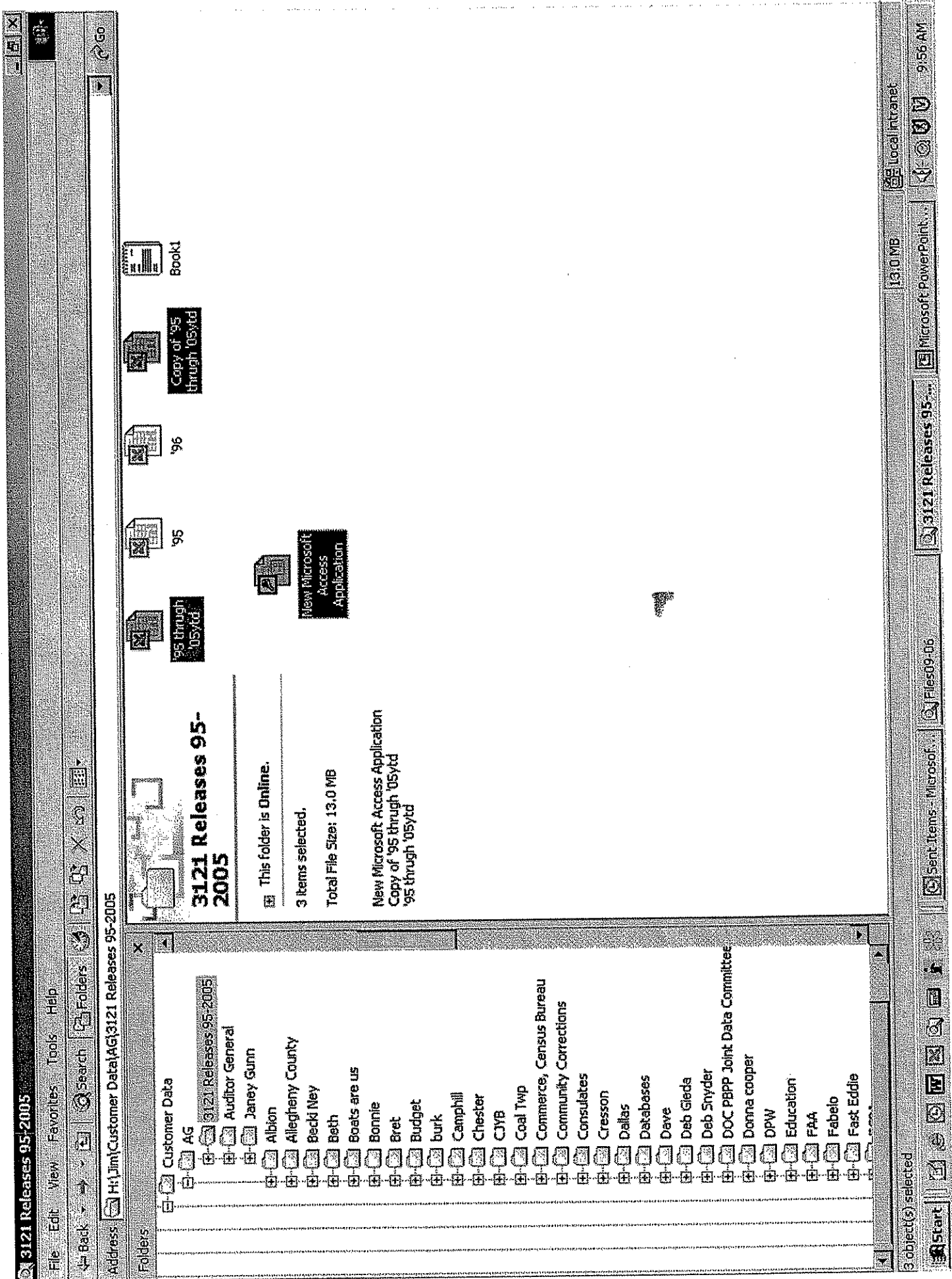
Min Category	Sentence category	1995	1996	1997	1998	1999	2000	2001	2002	2003	2004
Total Inmates With Code CC3121		1816	1990	2028	2072	2045	1996	2013	2047	2107	2100
	Max Out	36	33	45	66	73	77	73	72	72	66
	Parole Total	53	15	39	44	80	94	64	56	45	45
Within 1 year	Parole	27	4	10	4	9	6	10	9	9	7
After 1 year	Parole	26	11	29	40	71	88	54	47	36	38
After 2 years	Parole	11	5	14	32	53	67	44	38	27	22
After 3 years	Parole	5	2	7	22	28	47	24	23	14	22
After 1 year Total	Max out and Parole	62	44	74	106	144	165	127	119	108	110
All Max Outs and Parole		89	48	84	110	153	171	137	128	117	111

Have a good day.

Mark T. Emery
 Data Analyst
 Planning, Research, Statistics, and Grants
 Department of Corrections
 (717) 731-7149







Mary Catherine Roper

From: Smith, Beth [bsmith@attorneygeneral.gov]
Sent: Tuesday, October 24, 2006 3:06 PM
To: Mary Catherine Roper
Subject: Wolfe - DOC statistics
Follow Up Flag: Follow up
Flag Status: Red

Mary Catherine,

Attached are the raw numbers for the years 1995 to the present showing:

Number of DOC prisoners whose primary offense is rape ("Code CC3121")

Number of rapists who maxed out (in red)

Total number who were paroled (bold) – please note that this number includes within one year and after one year.

Number who were paroled within one year of minimum

Number who were paroled after one year of minimum (in blue). Maybe a better way of stating this would be "after *at least* 1 year of minimum" – because at this point, the chart becomes confusing. The "After 1 year" **includes** those released "After 2 years" and "After 3 years." "After 2 years" includes those also listed in "After 3 years" because, by definition, an inmate staying eight years after Min has stayed both "after 2 years" and "after three years."

To see this more clearly, if you added "within 1 year", "after 1 year", "after 2 years" and "after 3 years", you would arrive at a number larger than the number of total inmates actually released on parole in a given year.

The analyst who prepared this chart helpfully put "max out" in red and "after 1 year" in blue. If you add the two together, you get – appropriately enough -- the purple number. If you add that purple number to "within 1 year," you get the brown number: total number of rapists released that year for first parole or having maxed out.

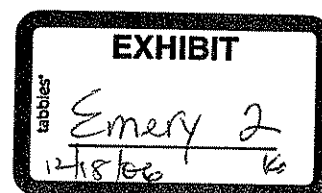
So, in 1995:

36 inmates whose primary offense was rape maxed out.
 27 inmates " " " " " were paroled, for the first time, within one year of their minimum.
 26 inmates " " " " " were paroled, for the first time, after one year of their minimum.
 Total: 89 inmates " " " " " were either paroled for the first time or maxed out.

Please keep in mind that these are raw numbers. **You cannot derive a rate of parole for rapists from these numbers. Neither the DOC nor the Parole Board keeps statistics on the number of rapists considered for parole in any given year. (It is my understanding that the Parole Board keeps stats on the number of violent offenders considered for parole, but obviously that number cannot be applied to this chart.)**

Other limiting factors include:

12/15/2006



Narrowly defined offense code. (This chart deals with only one code. But there are several offense codes and varying definitions of rape/sexual assault not included here, including but not limited to rape of a child, rape of a child with seriously bodily injury, statutory rape, involuntary deviant sexual intercourse, sexual assault, institutional sexual assault, aggravated indecent assault, aggravated indecent assault of a child, spousal sexual assault, etc.)

No notation for changes in *sentencing* guidelines

No indication of inmate rehabilitation programming success/failure/participation/refusal

No indication of inmate misconduct history

No indication of other qualitative factors used in parole consideration, such as inmate mental capacity and home plan suitability

The parole subset only includes first time parole and does not include reparaoles

The data tables were not originally designed as database tables. They are raw information tables and, as such, many edit checks that keep database tables "clean" may not have been in place.

If you have any questions, or wish to discuss this further, I can be reached at 215-560-2130.

Min Category	Sentence category	1995	1996	1997	1998	1999	2000	2001	2002
Total Inmates With	Code CC3121	1816	1990	2028	2072	2045	1996	2013	2000
	Max Out	36	33	45	66	73	77	73	
	Parole Total	53	15	39	44	80	94	64	
Within 1 year	Parole	27	4	10	4	9	6	10	
After 1 year	Parole	26	11	29	40	71	88	54	
After 2 years	Parole	11	5	14	32	53	67	44	
After 3 years	Parole	5	2	7	22	28	47	24	
After 1 year Total	Max out and Parole	62	44	74	106	144	165	127	1
All Max Outs and Parole		89	48	84	110	153	171	137	1

Other limiting factors include:

Narrowly defined offense code. (This chart deals with only one code. But there are several offense codes and varying definitions of rape/sexual assault not included here, including but not limited to rape of a child, rape of a child with seriously bodily injury, statutory rape, involuntary deviant sexual intercourse, sexual assault, institutional sexual assault, aggravated indecent assault, aggravated indecent assault of a child, spousal sexual assault, etc.)

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If you have any questions, or wish to discuss this further, I can be reached at 215-560-2130.

Min Category	Sentence category	1995	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005	2006 YTD	Grand Total
Total Inmates With Code CC3121		1816	1990	2028	2072	2045	1996	2013	2047	2107	2108	2132	2053	736
	Max Out	36	33	45	66	73	77	73	72	72	68	64	57	736
	Parole Total	53	15	39	44	80	94	64	56	45	50	39	42	621
Within 1 year	Parole	27	4	10	4	9	6	10	9	9	13	5	6	112
After 1 year	Parole	26	11	29	40	71	88	54	47	36	37	34	36	509
After 2 years	Parole	11	5	14	32	53	67	44	38	27	27	27	26	371
After 3 years	Parole	5	2	7	22	28	47	24	23	14	20	24	18	234
After 1 year	Max out and Parole	62	44	74	106	144	165	127	119	108	105	98	93	1245
Total		89	48	84	110	153	171	137	128	117	118	103	99	1357
All Max Outs and Parole														

12/18/2006

